

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

|                                   |   |                                      |
|-----------------------------------|---|--------------------------------------|
| EBAY INC.,                        | ) | CASE NO. C 08-4052                   |
|                                   | ) |                                      |
| Plaintiff,                        | ) | <b>[PROPOSED] ORDER GRANTING</b>     |
|                                   | ) | <b>MOTION OF DEFENDANTS</b>          |
| vs.                               | ) | <b>KESSLER'S FLYING CIRCUS,</b>      |
|                                   | ) | <b>THUNDERWOOD HOLDINGS, INC.,</b>   |
| DIGITAL POINT SOLUTIONS, INC.;    | ) | <b>BRIAN DUNNING AND</b>             |
| SHAWN HOGAN; KESSLER's FLYING     | ) | <b>BRIANDUNNING.COM'S TO DISMISS</b> |
| CIRCUS; THUNDERWOOD HOLDINGS,     | ) | <b>PLAINTIFF'S SECOND AMENDED</b>    |
| INC.; TODD DUNNING; DUNNING       | ) | <b>COMPLAINT</b>                     |
| ENTERPRISES, INC.; BRIAN DUNNING; | ) |                                      |
| BRIANDUNNING.COM; and DOES 1-20,  | ) |                                      |
|                                   | ) |                                      |
| Defendants.                       | ) |                                      |

The motion of Defendants KESSLER'S FLYING CIRCUS, THUNDERWOOD HOLDINGS, INC., BRIAN DUNNING and BRIANDUNNING.COM for dismissal of Plaintiff eBAY, INC.'s Second Amended Complaint pursuant to Federal Rules of Civil Procedure 12(b)(3) and/or 12(b)(6) came on regularly for hearing before this Court on June 26, 2009. The parties were represented by their respective counsel of record. Having fully considered the briefs, oral argument of counsel, and all other matters presented to the Court,

1 IT IS HEREBY ORDERED THAT Defendants KESSLER'S FLYING CIRCUS,  
2 THUNDERWOOD HOLDINGS, INC., BRIAN DUNNING and BRIANDUNNING.COM'S  
3 motion to dismiss is GRANTED and Plaintiff's Second Amended Complaint is dismissed as  
4 against them without leave to amend.  
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6 Dated: \_\_\_\_\_

\_\_\_\_\_  
7 Honorable Jeremy Fogel  
8 United States District Court Judge  
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